

Message Text

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TAGS: PINT, PEPR, SHUM, UK, EI
SUBJECT: REACTION TO EUROPEAN HUMAN RIGHTS COURT DECISION-
GOI VS HMG

REF: (A) STRASBOURG 026 (B) LONDON 1282

1. SUMMARY: INITIAL REACTION IN THE REPUBLIC TO THE
DECISION OF THE EUROPEAN COURT OF HUMAN RIGHTS ON
BRITISH PRACTICES IN 1971 WAS SURPRISE AND DISAPPOINTMENT
THAT THE COURT DID NOT CONFIRM THE COMMISSION'S FINDINGS
THAT "TORTURE" WAS USED. HOWEVER, BOTH THE MEDIA AND GOI
THEN DECIDED THAT THEY HAD ESSENTIALLY WON THE CASE, THAT
"INHUMAN AND DEGRADING" WAS ENOUGH. THE IRISH GOVERNMENT
ISSUED A RELATIVELY MILD STATEMENT, AND IS NOT INCLINED
TO EXACERBATE RELATIONS OVER THIS ISSUE. A KNOWLEDGEABLE
SOURCE SAID THAT THE MAIN REASON THE IRISH CARRIED THE
CASE TO THE END THROUGH THE COURT WAS THE INSISTENCE OF
THE FORMER ATTORNEY GENERAL, DECLAN COSTELLO, A LEGAL
PURIST WHO SAW A CHANCE TO MAKE A SUBSTANTIAL ADVANCE IN
INTERNATIONAL LAW DEALING WITH HUMAN RIGHTS. THE REACTION
ON BOTH SIDES IS ANOTHER OUTBREAK OF AN UNDERLYING TENSION
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BETWEEN THE TWO COUNTRIES WHICH PERIODICALLY SURFACES. IN
THIS CASE GOOD SENSE ON THE PART OF BOTH GOVERNMENTS SEEMS
TO BE PREVAILING AND THERE IS NO INDICATION THAT IT HAS
SERIOUSLY AFFECTED GOI-UK RELATIONS. END SUMMARY.

2. REACTION IN THE REPUBLIC TO THE STRASBOURG COURT OF
HUMAN RIGHTS DECISION ON THE GOI CASE AGAINST BRITAIN,

DESCRIBED IN REFTELS, HAS BEEN SOMEWHAT AT VARIANCE FROM THE REACTION IN THE UK AS DESCRIBED IN REFTEL B. WHILE THERE WAS INITIAL PUZZLEMENT, SURPRISE AND DISAPPOINTMENT OVER THE COURT'S REFUSAL TO CONFIRM THE UNANIMOUS COMMISSION REPORT THAT "TORTURE" WAS USED, UPON REFLECTION BOTH THE GOVERNMENT AND MEDIA HERE HAVE DECIDED THAT IRELAND HAS WON ITS CASE. "INHUMAN" AND "DEGRADING" SEEM TO BE SUFFICIENT CONDEMNATION. THERE IS, HOWEVER DIS-AGREEMENT OVER THE SIGNIFICANCE OF THIS DECISION. THERE HAS BEEN VERY LITTLE NOTICE TAKEN HERE OF THE COURT'S DECISION THAT INTERNMENT WAS JUSTIFIED UNDER THE CIRCUM- STANCES AND THAT THE COURT HAD NO JURISDICTION TO DEMAND PUNISHMENT OF THOSE GUILTY UNDER THE "INHUMAN" AND "DE- GRADING" CHARGE. THESE DECISIONS HAD BEEN EXPECTED BY MOST.

3. INITIALLY THE HEADLINES IN DUBLIN WERE: "TORTURE: BRITAIN CLEARED - GOVERNMENT AMAZED" (EVENING HERALD); "ANGER OVER NO TORTURE RULING" (IRISH PRESS); "EUROPEAN COURT FINDS INHUMAN TREATMENT BUT NOT TORTURE IN N.I." (IRISH TIMES). EDITORIAL WRITERS THEN REFLECTED ON THE DECISION AND DECIDED THAT THE DIFFERENCE BETWEEN "TORTURE" AND "INHUMAN/DEGRADING" WAS VERY SLIGHT, AND THAT THE COURT'S DECISION REALLY AMOUNTED TO A LANDMARK IN HUMAN RIGHTS. THE IRISH INDEPENDENT WAS TYPICAL OF THE EDITORIAL COMMENT: "TORTURE NO - INHUMAN AND DEGRADING TREATMENT YES. LIMITED OFFICIAL USE

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SUCH IS ONE OF THE VERDICTS OF THE EUROPEAN COURT OF HUMAN RIGHTS YESTERDAY IN ITS JUDGEMENT ON THE BEHAVIOUR OF BRITISH SECURITY FORCES IN THE NORTH IN 1971. TO UNDER- STAND THE DIFFERENCE WOULD REQUIRE FOR MOST OF US, A CRASH-COURSE IN SEMANTICS. WHAT THE PRISONERS SUFFERED IS RECOGNISABLE TO MOST OF US AS TORTURE. WHAT THE PRISONERS FELT AT THE TIME WAS TORTURE. AND WHAT FOUR MINORITY VOICES (OUR OWN INCLUDED) OF THE EUROPEAN COURT SAID WAS THAT TORTURE HAD BEEN PROVED. NEVERTHELESS THE VERDICT DOES NOT TAKE AWAY FROM THE FACT THAT THIS COUNTRY, BY SLOGGING ITS WAY OVER THE YEARS THROUGH THE HUMAN RIGHTS COMMISSION AND THEN, WITH THAT BODY'S FINDINGS, PRESSING FORWARD TO THE EUROPEAN COURT, HAS PERFORMED A SERVICE FOR ALL EUROPEANS BY HIGHLIGHTING TORTURE AND BY ENSURING THAT IN FUTURE NO EUROPEAN GOVERNMENT WILL EVER INCLUDE THESE INHUMAN TECHNIQUES IN ITS ARSENAL OF INTERROGATION TECHNIQUES."

4. THE GOI WAS SLOW AND CAREFUL ABOUT REACTING TO THE DECISION, AND ISSUED A STATEMENT ABOUT TWELVE HOURS AFTER THE NEWS FROM STRASBOURG. IT WAS A RESTRAINED STATEMENT WHICH CONCLUDED THAT THE COURT CONDEMNED THE METHODS

OF INTERROGATION UNDER REVIEW, WHICH "MUST BE WELCOMED BY
ALL WHO ARE INTERESTED IN THE PROTECTION OF HUMAN RIGHTS."

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5. IRISH GOVERNMENT STATEMENT (FIRST PARAGRAPH, A BARE
CHRONOLOGY, OMITTED): "THE COMMISSION AND NOW THE COURT OF
HUMAN RIGHTS HAVE CONDEMNED THE METHODS OF INTERROGATION
SHOWN TO HAVE BEEN USED BY THE BRITISH GOVERNMENT. THE
REPORT OF THE COMMISSION AND THE JUDGEMENT OF THE COURT
HAVE INDICATED TO THE BRITISH GOVERNMENT THAT TO RE-INTRO-
DUCE THESE METHODS OF INTERROGATION, IRRESPECTIVE OF
WHETHER THEY ARE CALLED TORTURE OR INHUMAN AND DEGRADING
TREATMENT, WOULD INVOLVE A DELIBERATE BREACH OF THE
CONVENTION RENDERING BRITAIN LIABLE TO EXPULSION FROM THE
COUNCIL OF EUROPE. AS A RESULT OF THE CASE, IRELAND HAS
SUCCEEDED IN OUTLAWING, IN NORTHERN IRELAND AND INDEED IN
ANY COUNTRY WHICH IS A SIGNATORY TO THE CONVENTION, THE
USE OF METHODS OF INTERROGATION WHICH THE COMMISSION DID
NOT HESITATE TO CALL TORTURE. IRELAND HAS ALSO SUCCEEDED,
IN THE FACE OF ABSOLUTE DENIALS THAT ANYTHING IRREGULAR HAD
TAKEN PLACE, IN ESTABLISHING BEFORE THE COURT THAT THERE
EXISTED IN PALACE BARRACKS IN 1971 A PRACTICE OF INHUMAN
TREATMENT. THE COURT HAS ALSO DESCRIBED THE TREATMENT OF
DETAINEES AT BALLYKINLER AS A REDITABLE AND RE-
PREHENSIBLE PRACTICE. THE COURT ALSO DECIDED THAT
THE INFORMATION BEFORE IT SUGGESTED THAT THERE MUST HAVE
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BEEN INDIVIDUAL CASES OF BREACHES OF ARTICLE 3 IN VARIOUS OTHER PLACES IN NORTHERN IRELAND. THE CASE MADE BY THE IRISH GOVERNMENT HAS STOOD UP TO RIGOROUS, INTERNATIONAL EXAMINATION, AND THE JUDGEMENT OF THE COURT, WHICH IS FINAL, MUST BE WELCOMED BY ALL WHO ARE INTERESTED IN THE PROTECTION OF HUMAN RIGHTS. IT WILL STRENGTHEN THE ABILITY OF GOVERNMENTS TO CO-OPERATE IN THE FIGHT AGAINST THOSE USING TERROR OR VIOLENCE FOR POLITICAL ENDS."

6. OVER THE LAST FEW DAYS WE HAVE TALKED TO MANY HERE, INCLUDING A NUMBER OF KEY GOI OFFICIALS, AND HAVE ATTEMPTED TO ASSESS THEIR REACTIONS AND PARTICULARLY THEIR MOTIVES FOR CARRYING THIS CASE TO THE END. THE REACTION OF COUNSELOR HUGH SWIFT, IN THE MFA ANGLO-IRISH DIVISION, WAS CALMLY ANALYTICAL. HE SAID THAT THE DECISION MUST BE PUT INTO PERSPECTIVE AND THAT HE SAW NO VALUE IN COMPLICATING ANGLO-IRISH RELATIONS. HOWEVER, HE SAID, THE POINT MUST BE MADE THAT IN 1971 THERE WAS A DELIBERATE, SYSTEMATIC AND GOVERNMENT-APPROVED ATTEMPT IN NORTHERN IRELAND TO EXTRACT INFORMATION BY TORTURE. THE END, HE SAID, DID NOT THEN AND SHOULD NOT EVER JUSTIFY THE MEANS. HE IS NOT SURE THAT THE DECISION BY THE COURT HAS MADE THIS POINT ADEQUATELY. HE DOES NOT THINK ANGLO-IRISH RELATIONS HAVE BEEN SERIOUSLY AFFECTED.

7. MFA LEGAL ADVISOR MICHAEL GREEN, WHO HAD HELPED PREPARE THE IRISH LEGAL BRIEF FOR STRASBOURG IN THE LATTER STAGES, TOLD US THAT THE DECISION TO CONTINUE THE BRIEF TO THE END WAS FORCED UPON A SOMEWHAT RELUCTANT GOVERNMENT BY THE FORMER ATTORNEY GENERAL, DECLAN COSTELLO, WHO IS AN "UNCOMPROMISING IDEALIST". COSTELLO, HE SAID, SAW THE CASE AS A "PURE LEGAL EXAMPLE" OF VIOLATION OF HUMAN RIGHTS AND A CHANCE TO MAKE AN IMPORTANT ADVANCE IN HUMAN LIMITED OFFICIAL USE

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RIGHTS JURISPRUDENCE IN INTERNATIONAL LAW. COSTELLO COULD NOT ACCEPT THE BRITISH GOVERNMENT PROMISE NOT TO USE THE FIVE INTERROGATION TECHNIQUES IN THE FUTURE AS A SUFFICIENT REASON TO DROP THE CASE -- IN HIS VIEW IT WAS A PURE CASE IN LAW AND THE CULPRIT SHOULD NOT BE ALLOWED TO ESCAPE BY SAYING HE WOULD NOT DO IT AGAIN. WESTERN LEGAL SYSTEMS DO NOT WORK THAT WAY. GREEN ALSO ASSERTED THAT PART OF THE GOI MOTIVATION, IN THE EARLY STAGES, CAME AS A RESULT OF THE "WHITWASH" BY THE COPELAND REPORT IN 1971, THE BRITISH GOVERNMENT REPORT ON THE ALLEGATIONS OF MISTREATMENT, WHICH MERELY CONCLUDED THAT SOME "ILL-GOVERNMENT OF THE TIME, AND THE SUCCEEDING GOVERNMENT, AND THE PRESENT GOVERNMENT,

SIMPLY COULD NOT ACCEPT THE CONCLUSION, AND THAT BOTH THE COMMISSION DECISION AND THE COURT DECISION HAD SHOWN THAT MORE WAS INVOLVED THAN MERE "ILL-TREATMENT". GREEN MADE THE FINAL POINT THAT HE HOPED THIS EPISODE WOULD NOT GET BOGGED DOWN AS ANOTHER "BLOOD IRISH" AND "BLOODY ENGLISH" CONFRONTATION. IT IS MORE THAN THAT, HE EMPHASIZED; IT IS NOT A POLITICAL QUESTION OF THE MOMENT AND THE GOI IS NOT TRYING TO SCORE POLITICAL POINTS, RATHER IT IS A FUNDAMENTAL QUESTION, GREEN SAID, OF THE PROPER WAY THAT DEMOCRATIC SOCIETIES MUST CONDUCT THEIR AFFAIRS WITHIN A SYSTEM OF LAW AND WITH REGARD TO BASIC HUMAN RIGHTS, NOTWITHSTANDING THE PROVOCATION.

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8. COMMENT: THE GOI IS DISAPPOINTED THAT THE VERDICT FELL SHORT OF A FULL FINDING OF "TORTURE" BUT HAS CHOSEN TO AVOID GETTING INTO A SLANGING MATCH WITH HMG. OTHERS HAVE NOT BEEN SO FORBEARING. THE GENERAL BRITISH REACTION, AS REPORTED IN REF B HAS STRUCK A SENSITIVE NERVE HERE. AS SEEN BY MOST HERE THE BRITISH MEDIA AND GOVERNMENT HAVE SOMEHOW TURNED THE WHOLE AFFAIR AROUND AND PUT THE GOI IN THE DOCK. THE IRISH HAVE NOT NOTED ONE IOTA OF REMORSE OR REGRET FROM ACROSS THE IRISH SEA. TYPICAL OF THE REACTION ON BOTH SIDES WAS TORY NORTHERN IRELAND SPOKESMAN AIREY NEAVE'S CHARGE ON IRISH TELEVISION THAT STRASBOURG AND THE RECENT LYNCH INTERVIEW WERE ALL PART OF A PATTERN DESIGNED TO HELP THE IRA. IRISH OPPOSITION LEADER GARRET FITZGERALD REPLIED, WITH CONSIDERABLE ANGER, "THIS IS

OUTRAGEOUS". INDUSTRY AND COMMERCE MINISTER DESMOND O'MALLEY, ALSO ON THE PROGRAM, WAS SO FURIOUS THAT HE COULD NOT TALK FOR A WHILE. (AIREY NEAVE HAS A REAL TALENT FOR INFURIATING THE IRISH.)

9. THE REACTION SEEMS TO BE ANOTHER OF THE PERIODIC OUT-BREAKS OF THE NEVER-FAR-BELOW-THE-SURFACE TENSION BETWEEN THE TWO COUNTRIES (SEE DUBLIN 77 337 WHICH DESCRIBES A LIMITED OFFICIAL USE

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PREVIOUS OUTBREAK). BOTH SIDES, AND PARTICULARLY THEIR MEDIA, SEEM TO TAKE GREAT DELIGHT IN POINTING OUT THE OTHER'S FAULTS AND IN ATTRIBUTING THE WORST MOTIVES TO ANY ACTION. THE TENSION, HOWEVER, IS USUALLY WELL-CONTROLLED BY THE GOOD SENSE OF THE TWO GOVERNMENTS, AND WE BELIEVE THAT FACTOR IS OPERATING IN THE PRESENT SITUATION SHANNON

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